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PRE-APPEAL BRIEF REQUEST FOR REVIEW <b>E8397148141US</b>		Docket Number (Optional) <b>Proflowers-P2-01</b>
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <b>August 30, 2007</b>		Application Number <b>09/847,644</b>
Signature: 		Filed <b>May 2, 2001</b>
Typed or printed name <b>Peter K. Trzyna</b>		First Named Inventor <b>Jared Polis Schutz</b>
		Art Unit <b>2625</b>
		Examiner <b>POPOVICI, Dov</b>

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

  
Signature

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

attorney or agent of record. **32,601**

Registration number \_\_\_\_\_

**312-240-0824**

Telephone number

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

**August 30, 2007**

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

\*Total of **4** forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Applicant would like to first apologize for the minor typographic errors in the remarks section of the response filed January 12, 2007.

**1. Clear Errors or Omissions as to All Claims 1-79: The Examiner Erred in not Granting Applicant its Earliest Effective Filing Date.**

Examiner has erred in asserting that Applicant was not entitled to the earliest effective filing date (parent application 09/149,650) because the waybill feature was allegedly not disclosed. More particularly, in Final Rejection at pages 6-7, the Examiner has erroneously dismissed the claim limitations relating to the waybill as not being supported in parent application. However, the Examiner's assertion is clearly incorrect because the parent application explicitly teaches the waybill feature at, for example, page 52, section entitled "Order Processing Pipeline", # enumerated as 5, page, 53, lines 12 and 13, page 54, lines 14-26, page 56, section entitled "Batch Processing and Scheduling", page 70, lines 13-17. Moreover, arguendo, if the Examiner's definition of "waybill" (Final Rejection at page 7) was found as a reasonable definition of "waybill", then Figure 2 of the parent application and related sections would clearly constitute disclosure of the claimed limitation of a "waybill".

Applicant provided a timely notification that the instant application is a continuing application originating from 09/149,650 in the May, 2, 2001 filing. The earliest effective filing date for this application is September 8, 1998. The Examiner erred in not granting the Applicant its earliest effective filing date for the instant invention, as required under 35 U.S.C. § 120.

Further, the parent application 09/149,650 was allowed (see Notice of Allowance dated July 01, 2004) at least in part, for claiming the waybill feature, the very feature the Examiner has erroneously stated as not supported in this same parent application.

Though each case is handled on its own merits, a reasonable level of consistency between the examinations of a parent and child application should be expected, especially

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when it relates to Applicant's rights regarding their effective earliest filing date. Applicant's other child application 09/776, 956 was granted the priority date of the parent 09/149,650, as should have occurred in the instant case.

In this case, the priority of the parent application has been intentionally set aside so that the examiner could improperly assert a piece of art as prior art when the record as a whole is clear that the reference does not constitute prior art.

**2. Clear Errors or Omissions as to All Claims 1-79: The Examiner Erred in Asserting U.S. Patent No. 6,206,750 as Prior Art Underpinning All §§102 And 103 Claim Rejections, When U.S. Patent No. 6,206,750 is Not Prior Art.**

Examiner has erred in asserting U.S. Patent No. 6,206,750 as prior art. For the reasons set forth above, U.S. Patent No. 6,206,750 does not qualify as prior art under either 35 U.S.C. §§102 or 103. Therefore, the rejection of all claims pursuant to §§102 and 103 based on U.S. Patent No. 6,206,750 was clear error.

**3. Remedy: No Basis for Withholding a Patent**

No valid basis has been asserted for withholding a patent, and allowance is therefore respectfully requested.